

ABSTRACT

Yanti, Anis Dyah. 10220068, 2014. *The Perspective of Islamic Law on the Mortgage Guarantee Execution Practice in Bank Muamalat Indonesia Malang*. Thesis. Department of Islamic Business Law, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang. Advisor: Khoirul Hidayah, S.H, M.H.

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The background of this research is initiated from the regulation of Mortgage Right mentioning that if the debtor defaults, the first Mortgage holder has the right to sell the Mortgage object through public auction. The holder also has the right to take the settlement from the sale. The banks do not have to deal with the court which requires a lot of time, energy and cost. They may directly send notification to the State Property Office and Auction (KPKNL) to execute collateral for the next auction sale. There are some previous research studies on the conventional banking dealing with Mortgage execution. What are the differences between the execution of the Mortgage guarantee and the Islamic banking when both of them refer to the same law, that is Law No. 4 of 1996 concerning Mortgage. However, the execution on the mortgage guarantee often creates problems. Thus, the author aims to reveal the execution process.

The problem of the study focuses on how to the execution practices of Mortgage guarantee in Bank Muamalat Indonesia Malang and its analysis from the perspective of Islamic law.

This research is an empirical study using a qualitative approach. The data consists of primary and secondary data collected by observations, interviews and documentation. The data obtained were studied intensively by qualitative analysis using the principles of Islamic law. From the results of this study, it can be concluded that the execution process of the Mortgage guarantees by Muamalat Indonesia Bank employs litigation (if the client is in cooperative) through the courts. The bank notifies the court to execute the process from the pre-auction to the bidding process or the Bank itself directly conducts an auction by registering first to KPKNL. If the customers are cooperative, the Bank will make on litigation step. It will make an agreement with the debtor to sell the mortgage to get the highest price. Secondly, from the perspective of Islamic law, the implementation of the execution in Bank Muamalat Indonesia Malang still uses positive law, but in most of the transaction it adopts Islamic law in accordance with Islamic banking concepts and Islamic principles, namely the principles of tawheed, justice (*al-adalah*), legal certainty, mutual benefit (*at-Ta'awun*), utility, voluntary (*ridha'iyah*), written (*al-kitabah*) and tolerance.